



Fw: HJTA letter to SLO Supes

Nikki Schmidt to: Annette Ramirez, cr_board_clerk Clerk
Recorder

06/09/2015 04:24 PM

Another correspondence for posting...

Nikki J. Schmidt
Administrative Office
County of San Luis Obispo

San Luis Obispo CA 93408

Administrative Office Mission Statement: Advise, interpret, and implement the goals and policies of the Board of Supervisors through effective leadership management of County services to achieve the County's vision of a safe, healthy, livable, prosperous and well-governed community.

----- Forwarded by Nikki Schmidt/Admin/COSLO on 06/09/2015 04:24 PM -----

From: Rita Neal/Counsel/COSLO
To: Nina Negranti/Counsel/COSLO@Wings, Nikki Schmidt/Admin/COSLO@Wings
Date: 06/09/2015 04:18 PM
Subject: Fw: HJTA letter to SLO Supes

For the hearing tomorrow.

Rita L. Neal
County Counsel
County Government Center,
San Luis Obispo, CA 93408

e-mail: rneal@co.slo.ca.us

The information contained in this e-mail may be protected by the attorney-client privilege and/or the attorney work product doctrine. Please do not forward this e-mail.

----- Forwarded by Rita Neal/Counsel/COSLO on 06/09/2015 04:18 PM -----

From: Jeff Edwards <jhedwardscompany@gmail.com>
To: darnold@co.slo.ca.us, lcompton@co.slo.ca.us, "ahill: co.slo.ca.us" <ahill@co.slo.ca.us>, "bgibson: co.slo.ca.us" <bgibson@co.slo.ca.us>, Frank Mecham <fmecam@co.slo.ca.us>, rneal@co.slo.ca.us, Assemblymember.Achadjian@assembly.ca.gov, Eric Benink <eric@kkbs-law.com>
Date: 06/09/2015 04:17 PM
Subject: Fwd: HJTA letter to SLO Supes

Please see the attached letter from the Howard Jarvis Taxpayer Association.

Julie Tacker
Administrative Assistant

J.H. Edwards Company

Los Osos, CA 93412

----- Forwarded message -----

From: **Ryan** <ryan@hjta.org>

Date: Tue, Jun 9, 2015 at 3:53 PM

Subject: HJTA letter to SLO Supes

To: jhedwardscompany@gmail.com

Please find our letter attached to this email as a PDF documents. Thanks.

J. Ryan Cogdill

Litigation Attorney

SBN: 278270

Howard Jarvis Taxpayers Association

Sacramento, CA 95814

Notice to Recipients:

This e-mail is intended only for the recipients identified above. It might contain information that is confidential, privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you should be aware that any dissemination, distribution, or copying of this communication is prohibited and we request that you notify us immediately and destroy the original transmission and the attachments thereto, if any, without reading or saving in any manner. Any tax advice included in this written or electronic communication was not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer by any governmental taxing authority or agency.



HJTA letter to SLO Bd of Supes 6-9-15.pdf

HOWARD JARVIS, Founder (1903-1986)
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs



HOWARD JARVIS TAXPAYERS ASSOCIATION

SACRAMENTO OFFICE:

Sacramento, CA 95814

www.hjta.org

June 9, 2015

San Louis Obispo County Board of Supervisors
Hon. Debbie Arnold, Chairperson of the Board
County Government Center,
San Louis Obispo, CA 93408

Re: San Louis Obispo County Tourism Marketing District

Dear Supervisors,

Howard Jarvis Taxpayers Association ("HJTA") hereby writes to express its concerns regarding the constitutionality of the proposed Tourism Marketing District under consideration by this Board. HJTA is a California nonprofit public benefit corporation with over 200,000 members. HJTA founder Howard Jarvis was co-author and co-sponsor of Proposition 13, the landmark taxpayer protection initiative overwhelmingly approved by California voters in 1978. HJTA also authored and sponsored Proposition 218, passed in 1996, and assisted in the drafting process of Proposition 26, passed in 2010. HJTA has litigated or otherwise been involved in dozens of lawsuits regarding the constitutional limitations on property-related fees and charges, including assessments levied against real property such as those proposed here.

HJTA understands that this Board believes the proposed Tourism Marketing District is needed to bolster tourism and commerce in San Louis Obispo County. HJTA takes no position as to the necessity or desirability of this proposal as a matter of public policy. However, HJTA believes that the proposal, as presently constituted, violates our state constitution because it does not comply with the procedural requirements imposed on the establishment of assessments by Proposition 218.

The San Louis Obispo County Tourism Marketing District Management District Plan (as amended February 10, 2015) expressly states that the proposed district will be formed pursuant to the Property and Business Improvement District Law of 1994 (Cal Sts & Hy Code §§ 36600 *et seq.*) (hereinafter, the "1994 Act"). As the title of the 1994 Act itself indicates, assessments imposed pursuant to the 1994 Act are assessments on real property. Therefore, the proposal must comply with the provisions of Proposition 218 as codified in our state constitution as article XIII D, section 4.

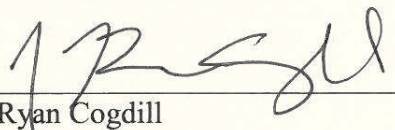
The only published decision germane to the 1994 Act supports this conclusion. The Fourth District Court of Appeal considered a constitutional challenge to the Parking and Business Improvement Area Law of 1989 (Sts. & Hy. Code §§ 36500-36551) (hereinafter, the "1989 Act"). In so doing, the court determined that assessments imposed pursuant to the 1989 Act "are assessments for the improvements and activities which confer special benefits upon the businesses for which the improvements and activities are provided." (*Howard Jarvis Taxpayers Association v. San Diego* (1999) 72 Cal. App. 4th 230, 234-35.) Therefore, the court reasoned, such assessments were not "assessments" within the meaning of Proposition 218. (*Ibid.*) However, the court then expressly held that the opposite was true for assessments imposed under the 1994 Act: "The 1989 Act contrasts with the Property and Business Improvement District Law of 1994 (§ 36600 et seq.), 'an alternative method of financing certain improvements and activities' (§ 36617) that provides for assessments on real property (rather than business owners) within a BID except for property which is zoned solely for residential or agricultural use (§ 36634)." (*Id.* at p. 235.) Ergo, assessments imposed pursuant to the 1994 Act are property assessments within the meaning of Proposition 218.

This Board is legally obligated to follow the procedures established in article XIII D, section 4. This includes, but is not limited to, the requirement that the proposed Tourism Marketing District be supported by a detailed report by a certified engineer (art. XIII D, section 4(b)), and the individualized calculation of the special benefit received by each assessed property (art. XIII D, section 4(c)). Failure to abide by these requirements is a *prima facie* violation of our state constitution.

As a final note, HJTA understands that this Board may believe the current proposal passes legal muster because it satisfies the procedural requirements embodied within the text of the 1994 Act itself. However, the 1994 Act predates the passage of Proposition 218 by two years; Proposition 218 establishes additional procedural requirements which cannot be abrogated by statutory enactment. Compliance with the statutory language alone is insufficient.

For the foregoing reasons, HJTA respectfully requests that this Board renew its consideration of its legal obligations regarding the proposed Tourism Marketing District, lest the County find itself embroiled in the long, arduous, and expensive process of litigation.

Respectfully submitted,



J. Ryan Cogdill

Litigation Attorney
Howard Jarvis Taxpayers Association